(22)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

HIGH COURT OF CHHATTISGARH AT BILASPUR

DIVISION BENCH:

HON'BLE MR. L.C. BHADOO &
HON'BLE MR. DHIRENDRA MISHRA, JJ

CRIMINAL APPEAL NO.980/2003

APPELLANT Gulab Chandra, aged 48 years, S/o Shri Satyanarayan, R/o Churcha Colliery, P.S. Baikunthpur, District Korea, Chhattisgarh.

VS

RESPONDENT The State of Chhattisgarh Through Station House Officer P.S. Baikunthpur, District Korea (C.G.).

Present:

Dr. N.K. Shukla, Sr. Advocate with Miss Ritu Mishra, Advocate for the appellant.

Mr. Sudhir Bajpai, Dy. Government Advocate for the respondent/State.

ORAL JUDGMENT

(10th July, 2007)

Per L.C. Bhadoo, J:

Heard.

Appeal is **admitted** for consideration.

Learned Sr. Counsel for the accused/appellant submits that the accused/appellant is in detention for about 4½ years, therefore, this appeal

P.T.O.

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

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itself may be heard finally, to which learned Dy. Govt. Advocate has no objection. As such, with the consent of the parties the appeal is heard finally.

This appeal is directed against the judgment of conviction and order of sentence dated 24th July, 2003 passed by the Additional Sessions Judge, Baikunthpur (Koriya) in S.T. No. 147/03 whereby learned Additional Sessions Judge after holding the accused/appellant guilty for commission of offence under Section 302 of the I.P.C. for committing murder of his wife Sikku @ Sharda, sentenced him to undergo R.I. for life and to pay a fine of Rs.1,000/-, in default of payment of fine to further undergo R.I. for two months.

Case of the prosecution, in brief, is that in the night of 17.2.2003 at about 10.30 p.m. Pooranchand (PW-5), son of accused, gave merg intimation (Ex.P-6) in the Police Outpost Churcha to the effect that on 16.2.2003 at about 2.30 p.m. his mother Sikku @ Sharda (since deceased) had gone along with Budhram (PW-9) towards Village Bankheta for consuming liquor. His father went to call his mother, at that time his mother was lying on the road in a drunken condition, therefore, his father & Budhram left her there. Today, his brother namely Arun Kumar (PW-6) went there with a lemon and he saw that his mother was lying dead. Based on this information, F.I.R. (Ex.P-4) was registered, Outpost In-charge Shri M.J. Firdousi (PW-15) left for the scene of occurrence on 18.2.2003 and after giving notice to the Panchas prepared the inquest (Ex.P-4) on the body of Sikku @ Sharda. Body of deceased was sent for postmortem examination to District Hospital, Baikunthpur under Ex.P-1A, where Dr. (Smt.) Neelam Tirkey & Dr. D.K.

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..... सन् 200

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Chikanjuri (PW-1) conducted postmortem on the body of deceased, prepared the postmortem report Ex.P-1 and opined that cause of death was coma due to head injury. While in police custody the accused gave memorandum (Ex.P-9) and a bamboo club at the instance of accused/appellant was seized under Ex.P-10. The bamboo club was sent for examination to the doctor under Ex.P-2A, who gave his opinion vide Ex.P-2 and opined that injuries found on the head of the deceased could be caused by the said bamboo club. Site plan (Ex.P-5) was prepared by the Patwari (PW-4).

After completion of investigation, charge sheet was filed in the Court of Chief Judicial Magistrate, Baikunthpur, who in turn committed the case to learned Sessions Judge, Sarguja, from where the Additional Sessions Judge received the case on transfer for trial. The prosecution in order to establish the charge against the accused/appellant examined 15 witnesses. Statement of accused/appellant was recorded under Section 313 of Cr.P.C. in which he denied the material appearing against him in the prosecution evidence and stated that he is innocent and has been falsely implicated in the crime.

Learned Additional Sessions Judge after hearing the arguments of learned counsel for the respective parties, convicted and sentenced the accused/appellant, as aforementioned.

We have heard Dr. N.K. Shukla, Sr. Advocate for the appellant and Mr. Sudhir Bajpayee, Dy. Govt. Advocate for the respondent/State.

In this case almost every eyewitness has turned hostile. Jairam Singh (PW-2) has stated that in one day morning he was going on his work to

(25)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..... सन् 200

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Baikunthpur. He saw that accused and his two daughters were standing behind Churcha Stadium and one lady was lying there. On enquiry, accused disclosed that his wife is lying because she has consumed liquor.

Budhram (PW-9), even though he has been declared hostile, but on cross-examination by the Assistant Government Pleader has stated that deceased Sikku @ Sharda asked her son Arun to bring foreign liquor and Sharda consumed the liquor brought by her son. Deceased was his sister-in-law. He & Sharda went together to consume liquor, Sharda consumed Mahua liquor. Gulab i.e. accused/appellant also consumed liquor. Accused asked his wife to go to the house. They left the place together. Accused assaulted him with the stick and also said that you people are still consuming liquor. Thereafter he asked Sikkubai to go to the house and when Sikkubai was going towards the house she fell down on the earth as she was in drunken condition. Both the daughters of Sikkubai namely Priya & Preeti were with her, she was lying on the earth and saying that they should allow her to take rest and later on, she will go to the house. At that time, accused came with a bamboo club, kicked her and also assaulted her with that bamboo club. He snatched that bamboo club from the accused, threw the same and thereafter he left for his house. The defence, in the cross-examination of this witness, has not been able to discredit the evidence to establish that the above evidence of this witness is not worth reliance.

Therefore, from the evidence of PW-9 Budhram it is clear that in the first instance the deceased and Budhram consumed liquor together. Accused

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

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also consumed liquor and thereafter when he asked his wife Sharda to accompany him to their house. Sikkubai, being in drunken condition was not able to walk and fell down on the earth. She asked that she will go later on, therefore, she may be allowed to lie down for some time. Accused came with a bamboo club and assaulted her with that club and as per doctor's report Ex.P-2 the injuries found on the head of the deceased could be caused by the bamboo club recovered from the accused. Therefore, from the evidence of Budhram (PW-9) and medical evidence it is established that the accused assaulted the deceased i.e. his wife with a bamboo club and as a result which she sustained head injury and died.

Learned Sr. Counsel for the accused/appellant argued that from the facts of the case it is not established that the accused had intention to cause death of his wife. In fact, the deceased and the accused both were in drunken condition, the accused persuaded his wife to accompany him to their house but being in drunken condition she was not able to walk, therefore, the accused assaulted her once with a bamboo club, which unfortunately landed on the head and proved fatal. Therefore, the offence against the accused/appellant does not travel beyond Section 304-II of the IPC.

On the other hand, learned Additional Public Prosecutor for the State supported the judgment of the trial court.

Having heard learned counsel for the respective parties, we have considered the evidence. The case of the prosecution itself is that the deceased & accused both had consumed liquor and both were in drunken

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..... सन् 200

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condition and as per evidence of PW-9 Budhram, who also consumed liquor with the deceased & accused, it has come on the record that when the accused asked the deceased to accompany her to their house, she being in drunken condition was not able to walk, therefore, the accused assaulted the deceased with the bamboo club as a result of which she sustained fatal injury and died. From the above fact it cannot be inferred that the accused had the intention to cause death of Sikkubai @ Sharda, but from the above evidence it can safely be inferred that while attacking the deceased with the bamboo club on her head, the accused had definite knowledge that he may likely to cause death of Sikkubai. Therefore, knowledge can be attributed to the accused and as such, the offence under Section 304 Part II of the IPC is made out against the accused/appellant.

In the result, the appeal filed by accused/appellant partly succeeds. Conviction of the appellant under Section 302 of the IPC and sentence imposed upon him under that section are hereby set aside and he is acquitted of that charge. Instead thereof, he is convicted under Section 304 Part II of the IPC and sentenced to undergo R.I. for 5 years. As per Paragraph 25 of the judgment the accused/appellant is in detention since 23.2.2003 till today, therefore, he shall be entitled for set-off of the above detention period against the sentence imposed upon him.

Sd/-
L.C.BHADOO
Judge

Sd/-
DHIRENDRA MISHRA
Judge

Roshan/-

P.T.O.